

EXHIBIT E

Reorganized Debtor's Opposition to Kraft Article III Motion (without Exhibit C thereto)

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Attorneys for Defendant
W. R. Grace & Co.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA – PHOENIX DIVISION**

Rune Kraft,

Plaintiff,

v.

Chevron Corporation, a Delaware corporation, Valley Pacific Petroleum Services, Inc., a California corporation, Valley Pacific Petroleum Systems, Inc., a California corporation, French Camp, LLC, a California limited liability company, Valley Pacific Investments, a California based business entity, Silvas Oil Company, Inc., a California corporation, Acclaim Credit Technologies, a California corporation, Cunningham & Associates Real Estate, LLC, an Arizona limited liability company, Burr Commercial Properties, a California corporation, International Credit Recovery, Inc., a California company, W.R. Grace & Company, a Connecticut company, Mitchell Brown General Engineering, Inc., a California company, San Joaquin Sand & Gravel, a California company, Kaweah River Rock Company, a California business entity, California State Board of Equalization, an entity of the State of California, Tulare County Superior Court, an entity of the State of California, Orix Financial Services, Inc., a New York company, James Oliver, Alroy J. Oliver, Richard D. Oliver and Larry P. Oliver,

Case No: 2-21-cv-00575-DJH

**RESPONSE IN OPPOSITION TO
MOTION FOR THE ARTICLE III
COURT TO REVIEW THE ORDER
ISSUED BY THE ARTICLE I COURT
(DOC. 72)**

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residents of California, Eric M. Black, LLC, a California limited liability company, Cemex, Inc., a Louisiana corporation, Lehigh Hanson, Inc., a Delaware corporation, and DOES 1-10, Inclusive,
Defendants.

Defendant W. R. Grace & Co. (“Grace”), through counsel, hereby responds in opposition to the Motion for the Article III Court to Review the Order Issued by the Article I Court (Doc. 72) (the “Article III Motion”) and states as follows:

1. Plaintiff Rune Kraft is in flagrant violation of two recent orders entered in the bankruptcy action styled *In re: W. R. Grace & Co., et al.*, Case No. 01-01139 (AMC) (D. Del. Bankr.) (the “Grace Chapter 11 Case”). Furthermore, by bringing this action against Grace, Mr. Kraft is also in violation of the Confirmation Order entered by the United States Bankruptcy Court for the District of Delaware (the “Delaware Bankruptcy Court”) in the Grace Chapter 11 Case. Finally, Mr. Kraft also continues to violate this Court’s order dated August 13, 2021, which prohibits Mr. Kraft from making further filings while the matter is stayed, other than as ordered therein.

2. On August 26, 2021, the Delaware Bankruptcy Court entered an order, a copy of which was filed with this Court as [ECF No. 72-1] (the “August 26 Order”), which states in relevant part:

Kraft is barred from taking any other action in the Arizona Chevron Action involving or otherwise pertaining to Grace except for filing the pleading seeking Grace’s dismissal from the Arizona Chevron Action and any other actions necessary to have Grace dismissed from the Arizona Chevron Action.

August 26 Order at ¶ 31.

3. On August 27, 2021, in violation of the August 26 Order, Mr. Kraft filed the Article III Motion in this action. On August 31, 2021, Grace filed an emergency contempt motion in the Grace Chapter 11 Case. A copy of the Reorganized Debtor’s Emergency Motion for an Order Finding that Rune Kraft is in Contempt of this Court by Having Willfully and Knowingly Violated this Court’s Confirmation Order and its Order of August 26, 2021

[Docket No. 33256] by Filing a Motion for an Article III Court’s Review of this Court’s August 26 Order (the “Emergency Contempt Motion”) was filed with this Court on September 1, 2021. *See* [ECF No. 74-1].

4. On September 3, 2021, Grace filed a Supplement to the Emergency Contempt Motion in the Grace Chapter 11 Case (the “Supplement”), a copy of which was filed with this Court on September 7, 2021. [ECF No. 77-1]. The Supplement informed the Delaware Bankruptcy Court that Mr. Kraft further violated the August 26 Order and the Confirmation Order by failing to timely file in this Court no later than September 2, 2021—as the August 26 Order required—a motion seeking dismissal of the Complaint as to Grace.

5. The Supplement also had attached to it e-mail correspondence from Mr. Kraft in which he incorrectly asserted that the Delaware Bankruptcy Court did not have personal jurisdiction over him. As explained in the Emergency Contempt Motion (¶ 9), the Delaware Bankruptcy Court has personal jurisdiction over Mr. Kraft pursuant to relevant Federal Rules of Bankruptcy Procedure. Fed. R. Bankr. P. 9020 (a motion for contempt commences a contested matter); Fed. R. Bankr. P. 9014 (service of motion in a contested matter to be made pursuant to Fed. R. Bankr. P. 7004 requirements for service of a summons and complaint); Fed. R. Bankr. P. 7004(f) (personal jurisdiction established by proper service). In addition, and as also discussed in the Emergency Contempt Motion (¶ 9), Mr. Kraft has long since waived his right to contest the Delaware Bankruptcy Court’s personal jurisdiction over him when on July 16, 2021, he filed a response [Docket No. 33245] to Grace’s July 13, 2021 motion [Docket No. 33242] to enforce the Confirmation Order. A copy of the July 13, 2021 motion was filed in this Court on July 14, 2021. *See* [ECF No. 38]. *See, e.g., In re Harlow Props., Inc.*, 56 B.R. 794, 799 (B.A.P. 9th Cir. 1985) (internal citation omitted) (“The defense of lack of personal jurisdiction is waived unless raised in a preliminary motion or in the first responsive pleading”); *Ruffing v. Wipro Ltd.*, No. 20-5545, 2021 U.S. Dist. LEXIS 59190, at *8 n.3 (E.D. Pa. 2021) (same).

6. On September 8, 2021, the Delaware Bankruptcy Court held a hearing on Grace’s Emergency Contempt Motion. Mr. Kraft did not appear at the September 8, 2021 hearing.

7. That same day, the Delaware Bankruptcy Court entered an order granting the Emergency Contempt Motion (the “September 8, 2021 Order”), a copy of which was filed with this Court as [ECF No. 78-1]. The September 8, 2021 Order states in relevant part:

B. Rune Kraft shall file a pleading in the Arizona District Court seeking to withdraw his Arizona Article III Motion within two (2) days of entry of this Order.

...

D. Mr. Kraft shall comply with the requirement set forth in August 26 Order ¶ 31.a to file a pleading in the Arizona District Court seeking dismissal of the Reorganized Debtor with prejudice from the Arizona-Chevron Litigation.

September 8, 2021 Order at 3.

8. Mr. Kraft failed to withdraw his Article III Motion within two (2) days of entry of the September 8, 2021 Order and he continues to violate the Delaware Bankruptcy Court’s orders requiring him to file a pleading in this action dismissing Grace with prejudice.

9. Mr. Kraft continues to intentionally defy the Delaware Bankruptcy Court’s orders and refusing to acknowledge the court’s authority. In the Article III Motion, Mr. Kraft repeats a statement that he made before the Delaware Bankruptcy Court at a hearing on August 26, 2021, in which he states that the Delaware Bankruptcy Court “does not have the constitutional authority to meddle with my controversy with” Grace. Article III Motion at 1. He further states that he does “not consent to the jurisdiction of [the Delaware Bankruptcy Court].” *Id.*

10. Most recently, on September 8, 2021, upon entry of the Delaware Bankruptcy Court’s September 8, 2021 Order, counsel for Grace in the Grace Chapter 11 Case sent an e-mail to Mr. Kraft attaching a copy of the September 8, 2021 Order and advising Mr. Kraft that failure “to file a pleading in the Arizona litigation within two days of entry of the September 8 Contempt Order seeking dismissal of your complaint as to Grace, Grace will be

entitled to file a subsequent contempt motion for failing to comply with that order.” *Id.*
Grace’s bankruptcy counsel further states that “Grace reserves the right to seek monetary
sanctions in any such motion” and that “[s]uch sanctions may be significant in amount.” *Id.*
A copy of the September 8, 2021 e-mail is attached hereto as Exhibit A (without attachment).

11. The next day, Mr. Kraft responded, confirming that he has no intention of
complying with the Delaware Bankruptcy Court’s orders and that “[t]he litigation at the
Article III court against W. R. Grace & Co. will proceed” and that, “if necessary that litigation
will continue at the Ninth Circuit, and the Supreme Court.” September 9, 2021 e-mail from
Rune Kraft to Roger Higgins, a copy of which is attached hereto as Exhibit B.

12. Mr. Kraft is also in violation of the Confirmation Order entered in the Grace
Chapter 11 Case, which prohibits Mr. Kraft from making any filings asserting claims
discharged in the Grace Chapter 11 Case. The Confirmation Order, a copy of which is
attached as Exhibit C hereto, states in relevant part:

All Entities shall be precluded and forever barred from asserting against the
Debtors and the Reorganized Debtors, or their assets, properties, or interests in
property any other or further Claims, Plan Claims, or Demands based upon any
act or omission, transaction, or other activity, event, or occurrence of any kind
or nature that occurred prior to the Effective Date, whether or not the facts of
or legal bases therefor were known or existed prior to the Effective Date, except
as expressly provided in the Plan.

Confirmation Order at § VI.A.1.

13. The Confirmation Order further states in relevant part:

With respect to any debts discharged by operation of law under §§ 524(a) and
1141 of the Bankruptcy Code, the discharge of the Debtors operates as an
injunction against the commencement or continuation of an action, the
employment of process, or an act, to collect, recover, or offset any such debt as
a personal liability of the Debtors.

Id. at § VI.A.2.

14. The Article III Motion also violates this Court’s order staying the action and
prohibiting Mr. Kraft from making any filings with the exception of a response to an order to
show cause issued by the Court [ECF No. 60] (the “Stay Order”). Since the entry of the Stay

Order on August 13, 2021, Mr. Kraft has filed five (5) unauthorized filings in violation of the Stay Order. *See* [ECF No. 64], [ECF No. 67], [ECF No. 68], [ECF No. 69], and [ECF No. 73].

15. For each of these reasons, the Court should deny the Article III Motion.

16. The Court should also deny the Article III Motion because it lacks merit. As discussed above (¶ 5) and set forth more fully in the Emergency Contempt Motion, which is incorporated herein by reference, the Delaware Bankruptcy Court has subject matter and personal jurisdiction to enter the August 26, 2021 Order requiring that Mr. Kraft dismiss Grace from this action with prejudice. *See* [ECF No. 74-1] at ¶¶ 7-9 (citing the August 26, 2021 Order at ¶ 16, which in turn cites *Citizens Against Corp. Crime, LLC v. Lennar Corp. (In re Landsource Cmtys. Dev., LLC)*, 612 B.R. 484, 495 (D. Del. 2020); *In re Continental Airlines, Inc.*, 236 B.R. 318, 325-26 (Bankr. D. Del. 1999); *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 151 (2009)).

WHEREFORE, defendant W. R. Grace & Co. respectfully requests that the Court enter an order denying the Article III Motion and granting W. R. Grace & Co. such other and further relief as the Court deems just and proper.

Respectfully submitted, this the 10th day of September, 2021.

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CERTIFICATE OF SERVICE

☒ I hereby certify that on September 10, 2021, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing.

☐ I hereby certify that on September 10, 2021, I served the attached document by U.S. Mail on the following, who are yet not registered participants of the CM/ECF System:

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Exhibit A

Roger Higgins

From: Roger Higgins
Sent: Wednesday, September 8, 2021 12:34 PM
To: Rune Kraft
Cc: Ingrid.Aronson@Kraft.Legal; 'James O'Neill (jo'neill@pszjlaw.com)'
Subject: In re W. R. Grace & Co., Case no. 01-1139 - Order Finding Rune Kraft in Contempt of Bankruptcy Court
Attachments: 2021-9-8_Contempt_Order_33265.pdf

Mr. Kraft,

Please find attached the order of the United States Bankruptcy Court for the District of Delaware finding you in contempt for your willful and knowing violation of the Bankruptcy Court's August 26 Order.

The corresponding docket entry is below.

09/08/2021	33265 (4 pgs)	Order Finding That Rune Kraft is in Contempt of this Court by Having Willfully and Knowingly Violated this Court's Confirmation Order and Its order of August 26, 2021 [Docket no. 33256] by Filing his Motion for an Article III Court's Review of this Court's August 26 order. (Related Doc # 33256 , 33259) Order Signed on 9/8/2021. (BJM) (Entered: 09/08/2021)
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Please be advised that, if you fail to file a pleading in the Arizona litigation within two days of entry of the September 8 Contempt Order seeking dismissal of your complaint as to Grace, Grace will be entitled to file a subsequent contempt motion for failing to comply with that order.

Grace reserves the right to seek monetary sanctions in any such motion. Such sanctions may be significant in amount.

Warmest Regards. R

Roger J. Higgins
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Exhibit B

Roger Higgins

From: Rune Kraft <rk@kraft.legal>
Sent: Thursday, September 9, 2021 6:52 AM
To: Roger Higgins
Cc: 'James O'Neill'
Subject: RE: In re W. R. Grace & Co., Case no. 01-1139 - Order Finding Rune Kraft in Contempt of Bankruptcy Court

Mr. Higgins,

I have made my position clear. The litigation at the Article III court against W.R. Grace & Co. will proceed.

And if necessary that litigation will continue at the Ninth Circuit, and the Supreme Court.

Rune

From: Roger Higgins <rhiggins@rogerhigginslaw.com>
Sent: Wednesday, September 8, 2021 3:34 PM
To: Rune Kraft <rk@kraft.legal>
Cc: Ingrid.Aronson@Kraft.Legal; 'James O'Neill (jo'neill@pszjlaw.com)' <jo'neill@pszjlaw.com>
Subject: In re W. R. Grace & Co., Case no. 01-1139 - Order Finding Rune Kraft in Contempt of Bankruptcy Court

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Grace reserves the right to seek monetary sanctions in any such motion. Such sanctions may be significant in amount.

Warmest Regards. R

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